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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/678,328-Conf. #4817
	Filing Date	October 3, 2000
	First Named Inventor	Yasuo TAKANE
	Art Unit	2622
	Examiner Name	Y. K. Aggarwal
Total Number of Pages in This Submission	Attorney Docket Number	0905-0247P

ENCLOSURES (Check all that apply)

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	BIRCH, STEWART, KOLASCH & BIRCH, LLP		
Signature			
Printed name	Marc S. Weiner		
Date	December 28, 2007	Reg. No.	32,181



MS APPEAL BRIEF - PATENTS
PATENT
0905-0247P

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Yasuo TAKANE	Conf. No.:	4817
Appl. No.:	09/678,328	Group:	2622
Filed:	October 3, 2000	Examiner:	Y. K. AGGARWAL
For:	DIGITAL CAMERA AND METHOD OF CONTROLLING THE SAME AND APPARATUS FOR AND METHOD OF OUTPUTTING IMAGE		

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MS APPEAL BRIEF - PATENTS

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 28, 2007

Sir:

Appellant submits herewith a Reply Brief. This Reply Brief responds to the Examiner's Answer dated November 1, 2007.

For clarity, the issues presented in the Appeal Brief filed July 23, 2007, will be repeated, and the reply to the Examiner's Answer will substantially correspond structurally to the argument section in the Appeal Brief.

I. ISSUES ON APPEAL:

The issue to be resolved in this application is:

Whether claims 1, 10 and 13-14 are unpatentable under 35 U.S.C. § 103(a) based upon the teachings of *Sasaki et al.* (USP 5,034,804) (hereinafter, "*Sasaki*") in view of *Takagi* (USP 5,319,416) (hereinafter, "*Takagi*").

II. NEW POINTS OF ARGUMENT RAISED BY EXAMINER'S ANSWER:

Appellant is providing this Reply Brief to respond to new points of argument raised in the Examiner's Answer. Appellant does not disagree with paragraphs (1)-(9) of the Examiner's Answer, except to the extent that the patent number of the Sasaki reference cited in paragraphs 6 and 7 of the Examiner's Answer should be U.S. Patent No. 5,034,804. The specific new point of argument that is raised in paragraph (10) to which Appellant disagrees are as follows:

1. The Examiner introduces new arguments that photometry values are the same as exposure values. The Examiner further asserts that Takagi's purported disclosure of storing exposure values in AE out memory 20, in combination with the teachings of Sasaki is sufficient to teach an image file create device for creating an image file for each imaging by the imaging device, the image file create device recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device including the identification numbers which specify each of the sections and a recording control device for recording the image file created by the image file create device on a recording medium, as required by claim 1. Appellant's response to these assertions is discussed in paragraph B. and C. below.

III. REPLY:

A. Argument Summary/B. Legal Requirements

The Examiner essentially responds to most of Appellant's arguments by asserting that Sasaki discloses storing an exposure value of an image in a file. Takagi discloses storing

photometry values. Therefore, the Examiner concludes that the combination of the two cited references render the pending claims obvious by teaching an image file create device for creating an image file for each imaging by the imaging device, the image file create device recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device including the identification numbers which specify each of the sections and a recording control device for recording the image file created by the image file create device on a recording medium, as required by claim 1. Appellant responds substantively to these arguments below.

B. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 1.

In responding to Appellant's arguments that the references fail to teach or suggest all of the claim elements, i.e., an image file create device for creating an image file for each imaging by the imaging device, the image file create device recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device including the identification numbers which specify each of the sections and a recording control device for recording the image file created by the image file create device on a recording medium, the Examiner asserts in his Answer on page 6, last paragraph, as follows:

Takagi has been used to show that instead of storing exposure values for the whole of the image (as in Sasaki), the exposure values (which are the same as the photometry values) for each of the sections of the image (See figures 2 and Step S4 in figure 4 of Takagi) are stored in memory 20 (col. 3, lines 32-49). This is done in order to calculate a correct exposure value for cameras that is capable of calculating a correct exposure for a principled object in a back-lighted or front-lighted condition as taught in Takagi thereby enhancing the quality of the reproduced image (col. 1, lines 41-45), Also see Abstract).

Appellants respectfully disagree with these assertions.

The Examiner asserts that exposure values are the same as photometry values. However, Takagi, in paragraph 4, lines 27-34, Takagi teaches as follows:

The reference numeral 80 indicates an exposure calculating section composed of a microcomputer and peripheral components thereof and adapted to perform exposure calculation on the basis of the photometry values E(1) to E(8) stored in the AE output memory 20 and the photometry values B(1) to B(24) stored in the AF output memory 50.

As can be seen from the above disclosure, Takagi calculates an exposure value **based on** temporarily stored photometry values. As such, the Examiner's assertion that the photometry values and the exposure value (calculated based on the photometry values) are the same is wholly improper and is completely inconsistent with the teachings of Takagi. The values are not the same, as the exposure value is calculated based on the photometry values.

Further, as can be clearly seen from the teachings of Takagi, the photometry values are only temporarily stored in memory 20 in order to calculate proper exposure. The Examiner seems to assert that because photometry values are stored anywhere in the device, even if only temporarily, that these teachings are sufficient to teach an image file for recording the photometry values. However, this assertion is wholly improper. The mere teaching of temporarily storing photometry values is wholly insufficient to teach or suggest recording photometry values in a file with image data.

There is no teaching or suggestion in Takagi that is directed to outputting the photometry values from the exposure calculation device depicted in Fig. 2. Further, there is no teaching or suggestion that is directed to storing the photometry values in a file with image data.

Even if the teachings of the cited references were combined as asserted by the Examiner, the resultant device would still only store an exposure value with the image data in a file, not the

photometry values as required by the claim. Takagi teaches outputting an exposure value, not photometry values. Thus, the combination of the cited references would still only teach storing an exposure value in a file as already disclosed in Sasaki. The combination fails to teach recording in an image file the image data and data representing the photometry values for each of the sections outputted by the photometry device and recording the file on a recording medium.

As the Examiner admits that Sasaki fails to teach or suggest these claim elements, Appellant maintains that the Examiner has failed to establish *prima facie* obviousness by failing to provide a reference that teach or suggests an image file create device for **creating an image file for each imaging by the imaging device, the image file create device recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device** including the identification numbers which specify each of the sections and **a recording control device for recording the image file created by the image file create device on a recording medium**. As such, claim 1 is patentable over the references as cited.

C. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 10.

In response to Appellant's argument that the rejection fails to establish *prima facie* obviousness, the Examiner asserts the same response discussed above with regard to claim 1.

However, for the reasons set forth above with regard to claim 1, the Examiner's response is insufficient to establish proper *prima facie* obvious as the cited references fail to teach or suggest all of the claim elements.

As such, based on the arguments set forth above with regard to claim 1, and based on Appellant's arguments set forth in the Appeal Brief, it is respectfully submitted that the Examiner

has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 10 is patentable over the references as cited.

IV. CONCLUSION

For all the reasons set forth above, the rejections in the Examiner's Answer dated November 1, 2007, are improper. It is therefore respectfully requested that the Examiner be reversed on all grounds.

Dated: December 28, 2007

Respectfully submitted,

By 

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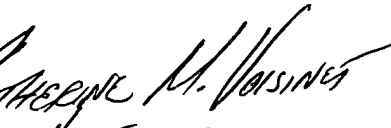
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